

10/729,195  
March 17, 2005  
Response to Restriction Requirement of 12/17/2004

Via Facsimile

Election

Applicant elects Set I, claims 11-19, methods claims, with traverse.

Applicant further elects the first species of Fig 2, with traverse as read below.

Remarks

Applicant traverses the Examiner's assertion that either 1) the process as claimed can be practiced by another materially different apparatus or 2) the apparatus can be used to practice another materially different process. The examiner then points out embodiments shown in Figs. 2-5 as patentably distinct apparatuses. However, all of those apparatus embodiments fall under the independent method claim (claim 11), as does the invention described in the independent apparatus claim (claim 1).

It is in fact noted that the examiner admits (page 3 second full paragraph) that claims 1 and 11 are generic, and that election of a species is only applicable if the broader generic claims are canceled. It is therefore not logical that the species, which are only patentably distinct when the generic claims are not allowable, are the reason why claims 1 and 11 (and their dependent claims) are distinct is because sub-species may be patentably distinct if the independent claims are canceled. This is further illogical since the species that the examiner pointed out are found in both the apparatus and method claims.

Applicant further notes that to practice claim 11, one would infringe on claim 1 and vice versa. Therefore the restriction requirement is improper.

In regards to the species, applicant has elected the first species shown in Fig. 2, although the second species shown in Fig. 3 is an obvious derivation of that shown in Fig. 2.

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Claims that are readable on Figs 2 and 3 are 1, 2, 3, 5, 6, 8, 9, 10, 11, 12, 13, 15, 16, 18 and 19. It is noted that many of these claims also read on the unelected species as well.

Respectfully submitted,

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